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**United States Department of Energy**  
**Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing )  
Filing Date: March 1, 2018 )  
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Case No.: PSH-18-0020

Issued: June 27, 2018

## Administrative Judge Decision

Katie Quintana, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, Subpart A, entitled “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the individual’s access authorization should not be restored.

## I. Background

A DOE contractor (Contractor) employs the individual in a position that requires him to hold a security clearance. In early June 2017, the Contractor subjected the individual to a random alcohol screening in the form of a breath alcohol test (BAT). Ex. 6 at 4; Ex. 9 at 13. The individual tested positive for alcohol with a result of .018. Ex. 6 at 4. The local security office (LSO) conducted a Personnel Security Interview (PSI) of the individual in August 2017, during which the individual reported consuming five to six beers the night prior to the BAT. Ex. 9 at 21. In response to information gathered during the PSI, a DOE consulting psychologist evaluated the individual in October 2017. Ex. 7 at 2.

Due to unresolved security concerns, the LSO informed the individual, in a Notification Letter dated January 11, 2018 (Notification Letter), that it possessed reliable information that created substantial doubt regarding the individual's eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information raised security concerns under Guideline G (alcohol consumption) of the Adjudicative Guidelines. Ex. 1.

<sup>1</sup> Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

Upon receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. Ex. 2. The Director of the Office of Hearings and Appeals (OHA) appointed me the Administrative Judge in the case, and I subsequently conducted an administrative hearing in the matter. At the hearing, the DOE Counsel submitted ten numbered exhibits (Exhibits 1-10) into the record and presented the testimony of the DOE psychologist. The individual did not introduce any exhibits into the record, but presented the testimony of five witnesses, including himself. The exhibits will be cited in this Decision as “Ex.” followed by the appropriate numeric designation. The hearing transcript in the case will be cited as “Tr.” followed by the relevant page number.

## **II. Regulatory Standard**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

## **III. Notification Letter and Associated Security Concerns**

As previously mentioned, the Notification Letter included a statement of derogatory information that raised concerns about the individual’s eligibility for access authorization. The information in the letter specifically cites Guideline G of the Adjudicative Guidelines. Guideline G relates to security risks arising from alcohol consumption. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness. Guideline G at ¶ 21. In citing Guideline G, the LSO relied upon the evaluation of its psychologist, who determined that the individual is a binge user of alcohol and had not shown adequate evidence of rehabilitation or reformation. Ex. 1. The LSO additionally cited the DOE psychologist’s conclusion that the individual’s binge drinking was such that his judgment may be impaired. *Id.* As a second basis for citing Guideline G, the LSO relied upon the individual’s admission during the PSI that he tested positive on a random alcohol

screening with a result of .018 and additionally admitted to consuming five to six beers on the night prior to that random screening. *Id.*

#### **IV. Findings of Fact**

The individual acknowledged the accuracy of the allegations in the Notification Letter and sought to mitigate any security concerns. Ex. 2. I have carefully considered the totality of the record in reaching the findings of fact set forth below.

The individual tested positive for alcohol during a random breath alcohol test (BAT) in early June 2017. Ex. 6 at 4. As a result of the positive BAT, the LSO interviewed the individual in an August 2017 PSI, during which the individual claimed to have consumed five or six beers over a two-and-a-half hour period the night prior to the BAT. Ex. 9 at 21-22.

In mid-October 2017, the DOE psychologist conducted an evaluation of the individual. Ex. 7. In his psychological report, the DOE psychologist noted that the individual reported consuming four to six beers approximately twice per month and “always on the weekends.” *Id.* at 5. However, when pressed, the DOE psychologist noted that the individual acknowledged that he would occasionally consume whiskey and, at “family gatherings” approximately five to six times per year, his consumption “could have been anywhere between eight and ten” beers. *Id.*

The individual informed the DOE psychologist that he had attended and completed a six-week Intensive Outpatient Program (IOP) in September 2017. *Id.* at 6. The individual represented that he had dramatically reduced his consumption of alcohol. *Id.* He claimed that he had only consumed one beer during his participation in the IOP and one beer on the weekend prior to the evaluation by the DOE psychologist. *Id.*

As part of the psychological evaluation, the DOE psychologist administered two laboratory tests: a Gamma-glutamyl transferase (GGT) test and a phosphatidylethanol (PEth) test. *Id.* at 7-8. The GGT was within normal limits; however, the PEth test result was positive. *Id.* at 8. The DOE psychologist explained that the results of the PEth test were “inconsistent with [the individual’s] reported alcohol consumption.” *Id.* at 7. He stated that the PEth test indicated that the individual was “drinking far more than he has admitted.” *Id.* at 8.

The DOE psychologist also surmised that the individual significantly underreported his alcohol consumption on the night before the BAT. Utilizing an online tool that estimates an individual’s breath alcohol concentration, taking into account variables such as height, weight, gender, age, and the alcohol content of the beverages consumed, the DOE psychologist calculated that the BAT would likely not have detected any alcohol if the individual had consumed five to six beers over two-and-one-half hours the night before the BAT. *Id.* at 2, 7. Based on the discrepancy between his calculations and the individual’s reported alcohol consumption, the DOE psychologist opined that the individual was minimizing his alcohol consumption. *Id.* at 7.

Ultimately, the DOE psychologist concluded that the individual was “a binge user of alcohol” and that “the identified binge drinking is to a point that [the individual’s] judgment may be impaired.” *Id.* at 10. In order to establish adequate evidence of rehabilitation or reformation, the DOE psychologist recommended that the individual: (1) continue attending his IOP’s aftercare support group on a weekly basis; (2) participate in at least three Alcoholics Anonymous (AA) meetings per

week; (3) actively search for and secure a sponsor; (4) engage in individual counseling on a weekly basis; (5) submit to random alcohol screenings; and (6) abstain from alcohol for one year. *Id.*

## V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the individual has not sufficiently mitigated the security concerns noted by the LSO with regard to Guideline G. I cannot find that restoring the individual's DOE security clearance will not endanger the common defense and security, and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Therefore, I have determined that the individual's security clearance should not be restored. The specific findings that I make in support of this decision are discussed below.

At the hearing, five witnesses testified on behalf of the individual: his direct supervisor, his mother, his girlfriend, the individual himself, and his counselor. The individual's supervisor testified that the individual was one of the top employees within the supervisor's group, and that he had no reason to question the individual's reliability and trustworthiness. Tr. at 14. Further, he stated that on the day of the BAT, the individual returned to work because, although the individual tested positive for alcohol at a level of .018, the individual tested below the employer's established limit of .02. *Id.* at 12-13.

The individual's mother testified as to significant changes she perceived in the individual's demeanor since the individual stopped drinking in early 2018. *Id.* at 26. She noted that the individual had been largely homebound since he suffered a severe injury in an accident in November 2017, which required him to undergo multiple surgeries and several courses of antibiotic treatments. *Id.* at 31. The mother explained that she does not believe that the individual has consumed alcohol since early 2018 as she has observed that the individual's physical appearance changes when he consumes alcohol and she has not observed any such manifestations. *Id.* at 38. According to the mother, the individual presently appears happier and more positive about life than during previous periods when she knew he was consuming alcohol. *Id.* at 34, 42.

The individual's girlfriend testified that she met the individual in January 2018, and that she has never observed him consume alcohol. *Id.* at 78. She reported that the individual has moved into her home, where she resides with her two young children, and that she required the individual to keep her home free of alcohol. *Id.* at 80-81. Because the individual's girlfriend does not maintain alcohol in her home, the individual is homebound, and the couple is together when she is not at work, the girlfriend expressed a high degree of certainty that she would be aware if the individual began consuming alcohol again. *Id.* at 86-87.

The individual also testified on his own behalf. The individual recounted the events leading up to the positive BAT, including that he had "probably" consumed more alcohol the night before the

BAT than the five to six beers he reported having consumed during the PSI. *Id.* at 93.<sup>2</sup> The individual testified that he stopped drinking at 7:30 p.m. the night before the BAT, and that he did not expect to test positive for alcohol. *Id.* at 93–94.

The individual also described his participation in the IOP. *Id.* at 95. Although the individual was advised not to drink alcohol during his participation in the IOP, the individual testified that he did so. *Id.* at 96. The individual recounted consuming six to eight alcoholic beverages per sitting on two or three of the weekends during the six-week IOP. *Id.* After his participation in the IOP, the individual claimed to have continued drinking approximately every other weekend until his meeting with the DOE psychologist. *Id.* at 96–97.

The individual admitted to underreporting his alcohol consumption to the DOE psychologist by “one or two drinks.” *Id.* at 74. However, later in the hearing, when prompted by his attorney under redirect examination, the individual admitted that he underreported to the DOE psychologist by “significantly more than one or two drinks,” and he explained that he did so because he “panicked.” *Id.* at 89, 97. The individual reported that he continued to drink in late 2017, after receiving the DOE psychologist’s report, “because [he] thought [he] could control it and it wasn’t as big an issue.” *Id.* at 64–65.

The individual testified that he began abstaining from alcohol in early January 2018 at the urging of his mother. *Id.* at 50–51. The individual reported that he began attending AA meetings in early January 2018, and that he felt that group sessions had helped and encouraged him in his abstinence from alcohol. *Id.* at 53–54. Several weeks after attending AA meetings for the first time, the individual began treatment for an infection resulting from his accident, including numerous surgeries requiring hospitalization and two six-week courses of antibiotic treatment, which left the individual largely homebound. *Id.* at 55, 70–71.

The individual testified that he resumed attending AA meetings in April, estimating that he attended five or six meetings in that month, but was not certain of the dates of his attendance and could not produce sign-in sheets. *Id.* at 69–70. The individual testified that he had to cease attending AA meetings in late April when he began his second course of antibiotic treatment. *Id.* at 69. As of the date of the hearing, the individual did not have an AA sponsor. *Id.* at 54. When asked what AA step he was on, the individual testified that he was “not necessarily on a specific step . . . [and did not] have them all memorized at this point.” *Id.* at 67.

When asked whether he has a drinking problem, the individual responded that he believes he “did have a problem” with alcohol and came to that realization after his BAT. *Id.* at 64. The individual also testified that he “intend[s] to abstain” from alcohol in the future. *Id.* at 61. He described his improved outlook and ability to manage aspects of his personal life since he began abstaining from alcohol. *Id.* at 60–61. Furthermore, the individual cited his improved willpower and focus as changes that would help him to remain abstinent. *Id.* at 67.

The individual’s counselor testified that the individual’s employer referred the individual to her after the positive BAT. *Id.* at 99. After an initial assessment session in August 2017, the individual,

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<sup>2</sup> Earlier in the hearing, the individual claimed not to have underreported his drinking during the PSI. Tr. at 74; *see also* Ex. 9 at 21–22.

at the recommendation of the counselor, participated in the six-week IOP. *Id.* at 115. The counselor described the individual's participation in the IOP as quiet, with consistent attendance and some participation without prompting. *Id.* at 100. The counselor testified that she was not surprised to hear that the individual had consumed alcohol during the IOP, that participants in IOPs often struggle to acknowledge and control their drinking problems, and that she did not "think that [the individual] actually bought in to the idea that he had a drinking problem . . . [and] he underestimated how much he was drinking." *Id.* at 100, 102.

After the IOP ended in September 2017, the counselor next saw the individual at an appointment in March 2018. *Id.* at 115. The counselor testified that in March "there was some improvement in [the individual's] thinking, his positiveness, [and] whatnot . . . ." *Id.* at 107. The individual next met with the counselor the day prior to the hearing. *Id.* at 115. The counselor testified that the individual had made other appointments with the counselor, but had to cancel those appointments due to his medical treatment. *Id.*

According to the counselor, the restrictions on the individual resulting from his seven surgeries and the fact that alcohol consumption might have diminished the effectiveness of the individual's antibiotics, potentially resulting in the amputation of his arm if he consumed alcohol, created a "forced abstinence" from alcohol. *Id.* at 105. The counselor testified that this forced abstinence provided the individual with several months of sobriety, during which he could experience the improvements to his health and wellbeing that sobriety offers and regain the "ability to think things through in a rational way . . . ." *Id.* at 105–06. According to the counselor, perceiving these benefits of sobriety is critical for individuals with drinking problems to choose to pursue sobriety in the future. *Id.* at 106. The counselor described the individual's current beliefs about his drinking as very different from when he participated in the IOP, attributed some of this change to his forced abstinence from alcohol, and speculated that the individual "has accepted the idea that alcohol for him is a negative and has a negative impact, one that he is no longer willing [] to accept." *Id.* at 99–102, 113–14.

The counselor testified that the individual scheduled a follow-up visit the week after the hearing, at which time she and the individual would develop a treatment plan in which she and the individual would meet weekly for a period of time and then transition to less frequent, but at least monthly, visits. *Id.* at 116. The counselor concurred with the DOE psychologist's determination that the individual is a binge drinker, and testified that she did not "take issue with" the DOE psychologist's recommendation that the individual show his rehabilitation through one year of abstinence from alcohol and participation in counseling or AA. *Id.* at 117. The counselor further testified as to the positive effects that changes in alcohol consumption can have on a person's ability to stabilize other aspects of their life, reflected on the individual's improved personal relationships, and opined that the individual had a good prognosis for remaining abstinent in the future. *Id.* at 110–14.

The DOE psychologist, after observing the hearing and listening to the testimony offered by the individual and all other witnesses, indicated that his diagnosis of the individual was unchanged and that the individual had not demonstrated an adequate period of abstinence from alcohol consumption to establish rehabilitation or reform. *Id.* at 121–24. He remarked that the testimony offered during the hearing indicated substantial progress on the part of the individual, and that the prognosis for the individual abstaining from alcohol was positive. *Id.* at 125–26. However, the DOE psychologist noted that the individual had not met any of his recommendations for

demonstrating rehabilitation or reform, including one year of abstinence from alcohol, attending AA and counseling on a consistent basis, and conclusively demonstrating his sobriety through PEth testing. *Id.* at 123, 128. The DOE psychologist testified that, in particular, “[t]he missing part is simply the time length. I really think that we need to see what he can do beyond the forced abstinence period, and . . . I would feel much more secure about his future if he were able to show [a] full year” of abstinence from alcohol. *Id.* at 123.

The DOE psychologist opined that, although the individual’s forced abstinence may have helped him to appreciate the benefits of sobriety, it was uncertain how the individual would react to returning to a normal life without barriers to drinking. *Id.* at 122. He noted that the individual’s claimed sobriety would have carried more weight towards demonstrating his rehabilitation or reform had it been based solely on his own personal willpower and not on the forced abstinence resulting from his treatment. *Id.* at 124–25. Furthermore, the DOE psychologist noted that the individual had minimized his drinking before, had not undergone the PEth testing that the DOE psychologist recommended during the period of the individual’s claimed abstinence, and that he did not “have total proof . . . that we’re getting a completely honest story.” *Id.* at 122–23, 128. Consequently, the DOE psychologist testified that he “stand[s] pretty firmly by [his] time frame and recommendations as being the ideal.” *Id.* at 123.

#### **A. Guideline G**

Alcohol-related incidents at work, such as reporting for work or duty in an impaired condition, and binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent, raise security concerns and can render an individual ineligible for access authorization. Guideline G at ¶ 22(b)(c). In this case, both the DOE psychologist and the counselor concurred as to the individual’s binge consumption of alcohol. Tr. at 117, 121; Ex. 7 at 9–10. Both experts also agreed that the individual is in the early stages of recovery and would benefit from a longer period of treatment and abstinence before he can be deemed rehabilitated. Tr. at 117, 123–24.

Although the individual offered testimony and evidence establishing that he has made commendable progress towards overcoming the concern regarding his alcohol consumption, I find that the individual has not adequately established that restoring his security clearance will not endanger the common defense and security, or that doing so is clearly consistent with the national interest. The individual admitted to consuming alcohol during the IOP in spite of receiving a recommendation to the contrary by his counselor. *See* Guideline G at ¶ 22(d)(e)(f). Further, he has not yet established the minimum twelve months of abstinence recommended by the DOE psychologist, has not yet begun treatment with the counselor pursuant to a treatment plan, and has not been able to establish regular and consistent attendance in AA. *Contra id.* at ¶ 23(d). Thus, I conclude that the individual has not sufficiently resolved the security concerns set forth in the Notification Letter with respect to Guideline G.

## **VI. Conclusion**

After considering all of the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to resolve the security concerns associated with Guideline G. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Katie Quintana  
Administrative Judge  
Office of Hearings and Appeals